

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MELVIN TIPTON

Claimant

VS.

EXCEL CORPORATION

Respondent

Self-Insured

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Docket No. 225,468

ORDER

Claimant appeals from a preliminary hearing order entered by Administrative Law Judge (ALJ) Kenneth S. Johnson on October 9, 1997.

ISSUES

The Administrative Law Judge denied claimant's request for additional medical treatment, referral to an orthopedic surgeon, and change of physicians. On appeal, claimant contends that the Administrative Law Judge erred because the evidence supports claimant's contention that he is in need of treatment for the low-back injury and the current treatment is unsatisfactory.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board finds that the issues raised by claimant on appeal are not jurisdictional issues and the Appeals Board, therefore, has no jurisdiction to review the findings by the Administrative Law Judge at this stage of the proceedings.

Claimant has a noncompensable kidney problem operated upon by a urologist, Dr. Paul E. L. Richardson. Claimant returned to work after the surgery and on June 21, 1997, claimant reached for a piece of meat and felt a pop in his back. Claimant states that Dr. Richardson advised that he now has a low-back injury, not related to his

kidney condition. Respondent, on the other hand, has presented testimony of Dr. V. P. Govind, a family practice physician. He testified that in his opinion claimant's problem is his kidneys and has prescribed medication for pain which he believes is coming from the kidneys. After considering this evidence, the Administrative Law Judge found that claimant's current medical treatment with Dr. Govind is satisfactory and denied claimant's request for referral to an orthopedic surgeon.

In an appeal from a preliminary hearing order, the Appeals Board has jurisdiction to review only allegations that the Administrative Law Judge has exceeded his or her jurisdiction. K.S.A. 44-551. Specific examples of jurisdictional issues are listed in K.S.A. 44-534a, as amended.

In this case, respondent is providing treatment through Dr. Govind. Dr. Govind did not rule out low-back injury. He testified that he wanted to see that the kidney problems were treated before addressing the back injury complaints. This conclusion was different from the conclusion of Dr. Richardson who suggested immediate referral to an orthopedic specialist. The ALJ, nevertheless, determined that the treatment provided by Dr. Govind was satisfactory. The order by the ALJ did not, as we view it, amount to a ruling that claimant has not suffered a back injury arising out of and in the course of his employment. The reasonableness of the decision to delay treatment for the back is not a jurisdictional issue. The Appeals Board, therefore, does not have jurisdiction to consider this appeal.

WHEREFORE, the Appeals Board finds that claimant's appeal should be dismissed and the order entered by Administrative Law Judge Kenneth S. Johnson should, and does, remain in effect as originally entered.

IT IS SO ORDERED.

Dated this ____ day of December 1997.

BOARD MEMBER

c: Michael L. Snider, Wichita, KS
D. Shane Bangerter, Dodge City, KS
Kenneth S. Johnson, Administrative Law Judge
Philip S. Harness, Director